



# Department of Justice

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## **JUSTICE DEPARTMENT REACHES SETTLEMENT WITH RHODE ISLAND DENTAL INSURER THAT PROHIBITS AGREEMENTS THAT DISCOURAGE DISCOUNTING**

### ***Settlement Means Lower Dental Care Prices and More Choices for Rhode Islanders***

WASHINGTON, D.C. -- The Department of Justice reached a settlement today with Rhode Island's largest dental care insurer that prohibits the insurer from discouraging dentists from offering discounts on dental care. As a result of the settlement, Rhode Islanders will pay less for their dental care, and have access to a wider choice of dental insurance alternatives.

The settlement with Delta Dental of Rhode Island would resolve a lawsuit originally filed in February 1996 in U.S. District Court in Providence, Rhode Island. The suit accused Delta Dental of discouraging competition from lower-cost dental insurance plans.

Delta Dental, which is headquartered in Providence, used a provision in its contracts with dentists known as a "most favored nation" clause that required any dentist caring for patients insured by Delta to charge those patients no more than the dentist charged any other patient, whether insured or not.

"Delta Dental's most favored nation clause sharply limited dentists' incentive to discount their fees and impaired entry and competition from other dental insurance plans," said Joel I. Klein, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "We were prepared to introduce evidence proving that some lower-cost plans had tried to do business in the state and had been unable to expand because of the most favored nation clause."

Almost all dentists in Rhode Island receive a significant share of their income from Delta, and these dentists were unwilling to accept a cut in that income in order to sign with other types of plans that offer fewer dentists but also lower costs. The clause also discouraged Rhode Island dentists from

offering fees lower than Delta's to individual, uninsured patients.

Delta, which collects about \$48 million a year in premiums, covers about 40 percent of Rhode Islanders who have dental insurance. More than 90 percent of the state's dentists in active practice have signed Delta contracts with the most favored nation clause.

Klein said that the clause severely restricted the ability of competing plans to attract and retain enough dentists to serve those insured by them.

The settlement follows an October 1996 decision by District Judge Raymond Pettine, denying Delta's motion to dismiss the Department's case. Delta had argued that Ocean State Physicians Health Plan, Inc. v. Blue Cross & Blue Shield of Rhode Island, decided by the First Circuit Court of Appeals in 1989, held that most favored nation clauses are almost always legal under the antitrust laws. Judge Pettine's opinion rejected this contention.

In view of Judge Pettine's opinion, the Department believes that this case--in addition to removing a barrier to competition among providers of dental care and dental insurance in Rhode Island--has made it clear that Ocean State does not legalize most favored nation clauses with anticompetitive effects. Judge Pettine's decision stands with several other recent court decisions from around the country recognizing that these clauses may be anticompetitive and illegal in some circumstances.

"The suit has clarified an important area of antitrust law by showing that most favored nation clauses are not always legal under the antitrust laws, but rather must be analyzed based on their effects," Klein said.

"This administration remains committed to making dental care, as well as other types of health care, available and affordable to all Americans. As a result of the Department of Justice's successful prosecution of this suit, Rhode Island consumers will have access to a wider choice of dental insurance alternatives, including discounted plans and other managed care options, and will also receive the benefits of increased price competition among Delta panel dentists," Klein added.

The consent decree filed with the court today would, if approved by the court, settle the suit, eliminate the most favored nation clauses, and prevent Delta from engaging in other actions that would limit future discounting by its participating dentists. The proposed consent decree, if approved by the court, would be in effect for 10 years.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, along with the

Department's competitive impact statement. Any person may submit written comments concerning the proposed decree during the 60-day comment period to Gail Kursh, Chief, Health Care Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W. Washington, D.C. 20530. Telephone: 202/307-5799.

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